

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5063 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

@

VIVEKANAND SHANKAR RAO BHAGAT

Versus

DISTRICT MAGISTRATE

Appearance:

1. Special Civil Application No. 5063 of 2002
MR YOGESH S LAKHANI for Petitioner No. 1
MR HH PATEL, AGP for Respondent No. 1-2,4
RULE SERVED BY DS for Respondent No. 3
-

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 20/06/2002

ORAL JUDGEMENT

1. Heard ld. counsel Mr. Pravin Gondaliya for Mr. Yogesh Lakhani, ld. counsel for the petitioner and Mr. H.H. Patel, ld. AGP for the respondents.

2. In this petition under Article 226 of the Constitution of India, the petitioner-detenu has challenged the legality and validity of the order of detention dated 6.5.2002 passed by the District Magistrate, Surendranagar, in exercise of the powers vested in him by Section 3(2) of The Prevention of Black Marketing & Maintenance of Supply of Essential Commodities Act, 1980 (hereinafter referred to as the PBM Act). According to the detaining authority, the petitioner is required to be detained to prevent him from acting in the manner prejudicial to the maintenance of supply of essential commodity like High Speed Diesel to the community.

3. The grounds of detention supplied to the detenu mainly indicate that petrol pump owned/ managed by the petitioner was inspected firstly on 19.1.2001 and certain irregularities were found and so notice for penal action was issued by the District Supply Authority and some minor penalty was imposed. Petrol pump of the petitioner was again inspected on 14.2.2002 and no apparent irregularity was noticed by the Mamlatdar who had inspected the petrol pump. Three samples of High Speed Diesel from different out-lets, viz., one from petrol out-let and two from different diesel out-lets were drawn in presence of the panchas on 14.2.2002 and the same were taken manually. Undisputedly, as transpires from the papers supplied to the detenu, variance in the density treated as negligible as per the policy of the State of Gujarat was found, because difference was within the permissible limit. The petitioner has produced these papers along with this petition and relevant pages are 3, 4 & 5. However, the very samples were sent to Forensic Science Laboratory and as per the report of FSL, density of High Speed Diesel was not found as per the requirement when samples were tested at the heat of 40 Degree Centigrade and 15 Degree Centigrade. It is clear from the FSL Report that blue colour used in the kerosene supplied for the distribution to the consumers through Fair Price Shop, was not found from the samples.

4. Ld. counsel Mr. Gondaliya appearing for the petitioner has taken through the entire memo of petition. He has challenged the order of detention on number of grounds, however, he has mainly focussed on two grounds. It is submitted that the petitioner was not supplied with all relevant, important and vital documents/papers referred to and considered by the detaining authority while recording subjective satisfaction for detaining the petitioner. It is rightly submitted that in the grounds

of detention, ld. District Magistrate has specifically referred condition no.8 of the licence issued to the petitioner, but copy of the licence along with the condition was not supplied to the petitioner. So, as per the settled legal position, it can be held that the petitioner was not offered full opportunity to make effective representation against the order of detention. This prevention from making effective representation against the order of detention goes to the root of the validity of the order under challenge. It is not necessary to refer to the decisions for the purpose because it is accepted proposition of law in the field of preventive detention. Detention order can be quashed solely on this ground.

5. The other point which has been focussed by ld. counsel Mr. Gondaliya for the petitioner is for unreasonable delay in passing the order of detention. So, it was open for the concerned authority to opt for less drastic measures i.e. institution of criminal proceedings or suspension and cancellation of licence etc. In response to the query raised by this Court, ld. counsel Mr. Gondaliya has submitted that even on the date of execution of the detention, the petitioner was permitted to continue with the licence and business and after two days after execution of detention order i.e. on 8.5.2002, the order of suspension of licence was passed. Petrol pump was inspected on 14.2.2002, samples were tested by FSL in the month of March 2002 and sponsoring authority was aware about the report as the first testing report was received by the office on 22/26.4.2002. Second report was received on 30.4.2002. However, till 6.5.2002, the order of detention was not passed. This period was required to be explained reasonably. Absence of reasonable explanation of this period of delay also goes to the root of the matter and, therefore, the order of detention becomes bad. Affidavit filed by the detaining authority viz. Deputy Secretary, Civil Supply Dept. which is taken on record, is silent on the vital points agitated by the ld. counsel appearing for the petitioner. Thus, on both these grounds the order of detention requires to be quashed and set aside.

6. In the result, petition is allowed. The impugned order of detention dated; 6.5.2002 passed by the District Magistrate, Surendranagar against the detenu is hereby quashed and set aside. Detenu Vivekanand Shankar Rao Bhagat is ordered to be set at liberty forthwith if not required to be detained in any other case.

Rule is made absolute. Direct Service is permitted.

20.6.2002 [C.K. BUCH, J]

*rawal